

the full amount of the deferred prepaid subscription income of X attributable to Division 1. Under applicable law, X does not recognize the deferred prepaid subscription income attributable to Division 1 because X's liability to furnish or deliver the newspaper, magazine, or other periodical ends as a result of a transaction to which section 381(a) applies. Under paragraph (g)(2) of this section, solely for purposes of determining whether the deferred income items of X attributable to Division 2 are taken into account as a result of the liquidation, the distribution of property to M2 is not treated as a transaction to which section 381(a) applies. Therefore, under applicable law, X's deferred prepaid subscription income attributable to Division 2 is taken into account in the determination of X's income or loss with regard to the liquidation. Further, under paragraph (g)(2) of this section, section 332(a) does not apply in determining the recognition or non-recognition of any income that M2 realizes on account of consideration received (or deemed received) on its assumption of X's liability to furnish or deliver the newspaper, magazine, or other periodical to which the prepaid subscription income relates.

(7) *Effective/applicability date.* This paragraph (g) applies to transactions occurring after April 14, 2008.

(h) *Non-applicability of section 362(e)(2)—(1) General rule.* Section 362(e)(2) does not apply to any inter-company transaction occurring on or after September 17, 2008. Taxpayers may apply this paragraph (h) to inter-company transactions occurring on or after October 22, 2004, and in such case, any election made under section 362(e)(2)(C) will have no effect. The purpose of this paragraph (h) is to facilitate the application of the consolidated return provisions addressing the duplication of loss between members of a consolidated group.

(2) *Anti-abuse rule—(i) General rule.* If a taxpayer engages in a transaction to which section 362(e)(2) would apply but for the application of paragraph (h)(1) of this section, and acts with a view to prevent the consolidated return provisions from properly addressing loss duplication, appropriate adjustments will be made to clearly reflect the income of the group.

(ii) *Example.* The following example illustrates the principle of the anti-abuse rule in this paragraph (h)(2).

Example. (A) *Facts.* P, the common parent of a consolidated group, owns the four outstanding shares of S stock (Share 1 through

Share 4) with an aggregate basis of \$0 and value of \$80. S owns Asset 1 with a basis of \$0 and a value of \$80. With a view to prevent the consolidated return provisions from addressing the duplication of loss, P transfers Asset 2 with a basis of \$100 and a value of \$20 to S in exchange for an additional share of S stock (Share 5) in a transaction to which section 351 applies. P later sells Share 5 to X, an unrelated person, for \$20 at a time when S's basis in Asset 2 was still \$100. The sale is a transfer of a loss share and therefore subject to § 1.1502-36.

(B) *Analysis.* Although the sale would be subject to § 1.1502-36, that section would not prevent the stock loss or reduce S's attributes (to prevent duplication of the stock loss) because neither § 1.1502-36(b) nor § 1.1502-36(c) would adjust the basis of the transferred share (because there are no investment adjustments) and § 1.1502-36(d) would not reduce S's attributes (because S's aggregate inside loss is \$0). However, because P acted with a view to prevent the consolidated return provisions from addressing the duplication of the loss on Asset 2, P's transfer of Asset 2 to S is subject to the anti-abuse rule in this paragraph (h)(2). Accordingly, effective immediately before the transfer of Share 5 to X, either P's basis in Share 5 or S's basis in Asset 2 must be adjusted to reflect what it would have been had section 362(e)(2) been applied at the time P transferred Asset 2 to S (taking into account the interim facts and circumstances). Accordingly, S must either reduce its basis in Asset 2 by \$80 to \$20 (eliminating the duplicated loss) or P must reduce its basis in Share 5 by \$80 to \$20 (eliminating the duplicated loss).

(C) *Transfer of all S shares.* Assume the same facts as those in paragraph (A) of this *Example*, except that P sells all five S shares to X. Although P's transfer of Asset 2 to S results in the duplication of an \$80 loss, because all the shares are transferred, the transaction does not prevent the consolidated return provisions from properly addressing loss duplication. P's \$80 duplicated loss is offset by an \$80 duplicated gain, and the group recognizes the offsetting stock gain and loss. Accordingly, this paragraph (h)(2) does not apply to P's transfer of Asset 2 to S.

[T.D. 8402, 57 FR 9385, Mar. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.1502-80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1.1502-81T Alaska Native Corporations.

(a) *General Rule.* The application of section 60(b)(5) of the Tax Reform Act

of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986 (relating to Native Corporations established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)) is limited to the use on a consolidated return of losses and credits of a Native Corporation, and of a corporation all of whose stock is owned directly by a Native Corporation, during any taxable year (beginning after the effective date of such sections and before 1992), or any part thereof, against the income and tax liability of a corporation affiliated with the Native Corporation. Thus, no other tax saving, tax benefit, or tax loss is intended to result from the application of section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986 to any person (whether or not such person is a member of an affiliated group of which a Native Corporation is the common parent). In particular, except as approved by the Secretary, no positive adjustment under § 1.1502-32(b) will be made with respect to the basis of stock of a corporation that is affiliated with a Native Corporation through application of section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986.

(b) *Effective Dates.* This section applies to taxable years beginning after December 31, 1984.

[T.D. 8130, 52 FR 8448, Mar. 18, 1987, as amended by T.D. 8560, 59 FR 41675, Aug. 15, 1994]

§ 1.1502-90 Table of contents.

The following list contains the major headings in §§ 1.1502-91 through 1.1502-99:

§ 1.1502-91 Application of section 382 with respect to a consolidated group.

- (a) Determination and effect of an ownership change.
 - (1) In general.
 - (2) Special rule for post-change year that includes the change date.
 - (3) Cross-reference.
- (b) Definitions and nomenclature.
- (c) Loss group.
 - (1) Defined.
 - (2) Coordination with rule that ends separate tracking.
 - (3) Example.
 - (d) Loss subgroup.
 - (1) Net operating loss carryovers.
 - (2) Net unrealized built-in loss.

- (3) Loss subgroup parent.
- (4) Election to treat loss subgroup parent requirement as satisfied.
- (5) Principal purpose of avoiding a limitation.
- (6) Special rules.
- (7) Examples.
- (e) Pre-change consolidated attribute.
 - (1) Defined.
 - (2) Example.
 - (f) Pre-change subgroup attribute.
 - (1) Defined.
 - (2) Example.
 - (g) Net unrealized built-in gain and loss.
 - (1) In general.
 - (2) Members included.
 - (i) Consolidated group with a net operating loss.
 - (ii) Determination whether a consolidated group has a net unrealized built-in loss.
 - (iii) Loss subgroup with net operating loss carryovers.
 - (iv) Determination whether subgroup has a net unrealized built-in loss.
 - (v) Separate determination of section 382 limitation for recognized built-in losses and net operating losses.
 - (3) Coordination with rule that ends separate tracking.
 - (4) Acquisitions of built-in gain or loss assets.
 - (5) Indirect ownership.
 - (6) Common parent not common parent for five years.
 - (h) Recognized built-in gain or loss.
 - (1) In general. [Reserved]
 - (2) Disposition of stock or an intercompany obligation of a member.
 - (3) Intercompany transactions.
 - (4) Exchanged basis property.
 - (i) [Reserved]
 - (j) Predecessor and successor corporations.

§ 1.1502-92 Ownership change of a loss group or a loss subgroup.

- (a) Scope.
- (b) Determination of an ownership change.
 - (1) Parent change method.
 - (i) Loss group.
 - (ii) Loss subgroup.
 - (iii) Special rule if election regarding section 1504(a)(1) relationship is made.
 - (2) Examples.
 - (3) Special adjustments.
 - (i) Common parent succeeded by a new common parent.
 - (ii) Newly created loss subgroup parent.
 - (iii) Examples.
 - (4) End of separate tracking of certain losses.
 - (c) Supplemental rules for determining ownership change.
 - (1) Scope.
 - (2) Cause for applying supplemental rule.
 - (3) Operating rules.
 - (4) Supplemental ownership change rules.